NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Interstitial Monitoring Requirement for Emergency Power Generator UST Systems
(LAC 33:XI.101 and 303) (UT016)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Underground Storage Tanks regulations, LAC 33:XI.101 and 303 (Log #UT016).

This rule requires underground storage tank (UST) owners and/or operators that install emergency power generator UST systems to conduct interstitial monitoring on all underground storage tanks and associated pressurized piping installed after the effective date of this regulation. The rule also corrects two typographical errors in the regulations. The 2005 Federal Underground Storage Tank Compliance Act, which amends Section 9003 of Subtitle I of the Solid Waste Disposal Act, mandates states authorized to administer the Underground Storage Tank Program to take certain actions to reduce the incidence of leaking USTs. One such action is to require that USTs installed in the state have secondary containment and interstitial monitoring for emergency power generator UST systems. This action must be implemented in order to maintain federal funding and federal delegation of the UST program, and will further enhance the state's effort to maintain protection of human health and the environment. Prior rulemaking promulgated the secondary containment requirement for all emergency generator tank systems installed after December 20, 2008, but the interstitial monitoring requirement was inadvertently left out of that regulation. The basis and rationale for this rule are to comply with the federal guidelines required by the 2005 Underground Storage Tank Compliance Act. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on June 25, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by UT016. Such comments must be received no later than July 2, 2009, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge,

LA 70821-4302 or to FAX (225) 219-3398 or by e-mail to donald.trahan@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of UT016. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

Title 33

ENVIRONMENTAL QUALITY

Part XI. Underground Storage Tanks

Chapter 1. Program Applicability and Definitions

§101. Applicability

A. – C.2.a.v. …

b. LAC 33:XI.701-705 does not apply to any UST system that stores fuel solely for use by emergency power generators~~s~~ UST systems installed prior to [INSERT DATE OF PROMULGATION]. Emergency power generator UST systems installed or replaced on or after [INSERT DATE OF PROMULGATION], are subject to all requirements of LAC 33:XI, including the interstitial monitoring release detection requirements of LAC 33:XI.701-705.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:1467 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:**.

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§303. Standards for UST Systems

A. – D.2.f. …

i. any of the accepted piping designs listed in Subparagraphs D.2.a-e of this Section shall be fabricated with double-walled or jacketed construction in accordance with Subsection A of this Section, shall be capable of containing a release from the inner wall of the piping, and shall be designed with release detection in accordance with LAC 33:XI.701.B.4; or

ii. …

g. if 25 percent or more of the piping to any one UST is replaced after December 20, 2008, it shall comply with Clause D.2.f.i or ii of this Section. If a new motor fuel dispenser is installed at an existing UST facility and new piping is added to the UST system to connect the new dispenser to the existing system, then the new piping shall comply with Clause D.2.f.i or ii of this Section. Suction piping that meets the requirements of LAC 33:XI.703.~~D.~~B.2.b.i-v and suction piping that manifolds two or more tanks together are not required to meet the secondary containment requirements outlined in this Paragraph.

D.3. – E.6.b. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007), LR 34:2116 (October 2008), LR 35:**.

FISCAL AND ECONOMIC IMPACT STATEMENT

FOR ADMINISTRATIVE RULES LOG #: UT016

Person Preparing Statement: Samuel Broussard
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Return Address: 602 N. Fifth
Baton Rouge, LA 70802

Rule Title: Interstitial Monitoring Requirement for Emergency Power Generator UST Systems (LAC 33:XI.101 and 303

Date Rule Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

State and local government agencies that have underground storage tanks (USTs) will incur extra costs when they install new emergency generator UST systems or replace piping on existing emergency generator UST systems. The cost of an installation will increase by approximately 5% due to the cost of installing an interstitial monitoring system for the tanks and any associated pressurized piping. Interstitial monitoring for piping will only be required on pressurized piping systems, as suction systems are exempt from this requirement. Government agencies may avoid incurring the extra costs, should they choose to do so, by installing aboveground storage tanks for their emergency generators.

Interstitial monitoring requirements will allow for detection of releases from emergency generator USTs, resulting in less environmental contamination and fewer and lower claims to the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) managed by the department.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governmental units will not change as a result of this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Only underground storage tank owners and operators that install new emergency power generator USTs, or replace piping on existing emergency generator UST systems, will be directly affected by the proposed rule. There will be an approximate 5% increase in the cost of installing an emergency generator UST system due to the addition of an interstitial monitoring system for emergency generator tanks and piping over installing them without interstitial monitoring systems. The approximate average cost for installing a typical one-tank emergency generator system is approximately $30,000 to $50,000, but this could increase to up to $100,000 depending on the number of tanks, size of tanks, and complexity of the emergency generator system. Interstitial monitoring will result in a reduction of undetected releases that require remediation, therefore ultimately offsetting the cost of the requirement in whole or in part. A decrease of third party law suits resulting from offsite migration may result from the requirement for interstitial monitoring, due to the detection of releases.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition or employment from the proposed rule.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel

Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT

FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule will require underground storage tank owners and/or operators that install emergency power generator UST systems to conduct interstitial monitoring on all underground storage tanks and associated pressurized piping installed after the effective date of this regulation. The rule also corrects two typographical errors in the regulations.

B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The 2005 Federal Underground Storage Tank Compliance Act, which amends Section 9003 of Subtitle I of the Solid Waste Disposal Act, mandates states authorized to administer the Underground Storage Tank Program to take certain actions to reduce the incidence of leaking USTs. One such action is to require that USTs installed in the state have secondary containment and interstitial monitoring for emergency power generator UST systems. This action must be implemented to maintain federal funding and federal delegation of the UST program, and will further enhance our effort to maintain protection of human health and the environment. Prior rulemaking promulgated the secondary containment requirement for all emergency generator UST systems installed after December 20, 2008, but the interstitial monitoring requirement was inadvertently left out of that regulation.

C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No expenditure of funds will occur.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a)_____Yes. If yes, attach documentation.

(b)_____No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 08-09	FY 09-10	FY 10-11
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	minimal	minimal	minimal
TOTAL	minimal	minimal	minimal
MAJOR REPAIR & CONSTR	0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

State agencies that have underground storage tanks (USTs) will incur extra costs when they install new emergency generator UST systems or replace piping on existing emergency generator UST systems. The cost of an installation will increase by approximately 5% due to the cost of installing an interstitial monitoring system for the tanks and any associated pressurized piping. The approximate average cost for installing a typical one-tank emergency generator system is approximately $30,000 to $50,000, but this could increase to up to $100,000 depending on the number of tanks, size of tanks, and complexity of the emergency generator system. Interstitial monitoring for piping will only be required on pressurized piping systems, as suction systems are exempt from this requirement. Government agencies may avoid incurring the extra costs, should they choose to do so, by installing aboveground storage tanks for their emergency generators.

Interstitial monitoring requirements will allow for detection of releases from emergency generator USTs, resulting in less environmental contamination and fewer and lower claims to the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) managed by the department.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 08-09	FY 09-10	FY 10-11
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The department has sufficient funds to implement the proposed rule. If we do not implement the rule we could lose the federal funding for the underground storage tank program.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

Local government agencies that have underground storage tanks (USTs) will incur extra costs when they install new emergency generator UST systems or replace piping on existing emergency generator UST systems. The cost of an installation will increase by approximately 5% due to the cost of installing an interstitial monitoring system for the tanks and any associated pressurized piping. The approximate average cost for installing a typical one-tank emergency generator system is approximately $30,000 to $50,000, but this could increase to up to $100,000 depending on the number of tanks, size of tanks, and complexity of the emergency generator system. Interstitial monitoring for piping will only be required on pressurized piping systems, as suction systems are exempt from this requirement. Government agencies may avoid incurring the extra costs, should they choose to do so, by installing aboveground storage tanks for their emergency generators.

Interstitial monitoring requirements will allow for detection of releases from emergency generator USTs, resulting in less environmental contamination and fewer and lower claims to the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) managed by the department.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

Should local governmental units choose to install new emergency generator USTs, the cost of installing the interstitial monitoring system will be added to the initial installation cost.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 08-09	FY 09-10	FY10-11
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

Revenue collections of state and local governmental units will not change as a result of this proposed rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Only underground storage tank owners and operators that install new emergency power generator USTs, or replace piping on existing emergency generator UST systems, will be directly affected by the proposed rule. There will be an approximate 5% increase in the cost of installing an emergency generator UST system due to the addition of an interstitial monitoring system for emergency generator tanks and piping over installing them without interstitial monitoring systems. The approximate average cost for installing a typical one-tank emergency generator system is approximately $30,000 to $50,000, but this could increase to up to $100,000 depending on the number of tanks, size of tanks, and complexity of the emergency generator system. Interstitial monitoring will result in a reduction of undetected releases that require remediation, therefore ultimately offsetting the cost of the requirement in whole or in part. A decrease of third party lawsuits resulting from offsite migration may result from the requirement for interstitial monitoring, due to the detection of releases.

B. Also, provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be no impact on receipts or income from adoption of the rule.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There should be no impact on competition or employment from the proposed rule.